

MAY 02 2001



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Patent Cooperation Treaty  
Legal Office

Address: Assistant Commissioner for Patents  
Box PCT  
Washington, D.C. 20231

Evenson, McKeown, Edwards  
& Lenahan, PLLC  
1200 G. ST., N.W., Suite 700  
Washington, DC 20005

In re Application of :  
Webb et al. :  
Application No.: 09/763360 : DECISION ON  
PCT No.: PCT/GB99/04354 :  
Int. Filing Date: 21 December 1999 : PETITION UNDER  
Priority Date: 21 December 1998 :  
Attorney's Docket No.: 3036/49686 : 37 CFR 1.137(b)  
For: Acoustically Activated Marketing Device :

This is in response to the petition under 37 CFR § 1.137(b)" filed on 21 February 2001.

**BACKGROUND**

This international application was filed on 21 December 1999, and claimed an earliest priority date of 21 December 1998. A copy of the international application was transmitted to the USPTO on 29 June 2000. No Demand electing the United States was filed prior to the elapse of 19 months from the international filing date. Accordingly, the twenty-month time period to pay the basic national fee in the United States expired as of midnight on 21 August 2000. This international application became abandoned with respect to the United States for failure to timely pay the required basic national fee.

Applicant filed the instant petition and accompanying fees and papers on 21 February 2001.

**DISCUSSION**

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this

paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Regarding requirement (1), the petition was accompanied by the required reply in the form of the basic national fee.

Concerning requirement (2), the petition is accompanied by the required petition fee.

Regarding requirement (3), the petition includes a statement that "the abandonment of the application was unintentional." This statement is being construed as a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Petitioner must notify the Patent and Trademark Office if such an interpretation of the statement in the petition is not correct. Thus, the statement in the petition is being accepted in satisfaction of 37 CFR 1.137(b)(3).

As to requirement (4), no terminal disclaimer is required because the international filing date of this application was later than 08 June 1995.

### **DECISION**

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for continued processing, including the preparation and mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring the filing of an executed oath or declaration of the inventors and a surcharge under 37 CFR 1.492(e).

*Boris Milef*  
Boris Milef  
PCT Legal Examiner  
PCT Legal Office

*G Dombroske*  
George M. Dombroske  
PCT Legal Examiner  
PCT Legal Office  
Tel: (703) 308-6721  
Fax: (703) 308-6459